

1 Leslie T. Gladstone, Trustee
 2 401 Via Del Norte
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4 Chapter 7 Trustee
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6 UNITED STATES BANKRUPTCY COURT
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SOUTHERN DISTRICT OF CALIFORNIA

8 In re:) Case No.: 13-05225-CL7
 9 EMMANUEL CULALA SANTOS and)
 MA RUBY ZAFRA SANTOS,) **REPLY TO DEBTORS' OPPOSITION TO**
 10) **TRUSTEE'S OBJECTION TO DEBTORS'**
 11 Debtors.) **CLAIM OF EXEMPTIONS**
 12) Date: September 16, 2013
 13) Time: 10:00 a.m.
 14) Dept: Five (5)
 15) Honorable Christopher B. Latham
 16)
 17)

18 Leslie T. Gladstone, the chapter 7 trustee (the "**Trustee**"), submits this Reply to Opposition
 19 to Trustee's Objection to Debtors' Claim of Exemptions.

20 To the extent that any contributions to the Debtors' plans exceed the maximum contribution
 21 limit(s), the Debtors' claim of exemption in such excess amount should be disallowed.

22 I have requested additional documents from the Debtors regarding the actual amount of their
 23 contributions to their various plans during the period January 1, 2011 to December 31, 2012. To
 24 date, I have not received those documents.

25 Defined Benefit Plan. I agree with the Debtors that, per Internal Revenue Code Section
 26 415(b)(1), the 2012 annual limitation for defined benefit plans is the lesser of (i) 100% of the
 27 participant's average compensation for his or her highest three consecutive calendar years or
 28 (ii) \$200,000. Given that the balance in the Defined Benefit Plan as of the bankruptcy filing was
 \$23,885, I agree that it is unlikely that the Debtors over-contributed to this plan. The point is,
however, that I have not yet received the plan statements to confirm that the Debtors did not over-
contribute to this plan.

1 Defined Contribution Plan. I likewise agree with the Debtors that, per Internal Revenue
 2 Code Section 415(c)(1), the limitation for defined contribution plans increased from \$50,000 in
 3 2012 to \$51,000 in 2013. Given, however, that the balance in the Defined Contribution Plan as of
 4 the bankruptcy filing was \$56,708, I cannot say that over-contribution to this plan is unlikely. The
 5 point, again, is that I have not yet received the plan statements to confirm that the Debtors did not
 6 over-contribute to this plan.

7 If the Debtors contributed to the Defined Benefit Plan or the Defined Contribution Plan an
 8 amount in excess of the contribution limit(s), that excess amount should be nonexempt property of
 9 the estate.

10 IRA. The Debtors claim that the limit on annual contributions to an IRA rose to \$5,500 in
 11 2013, up from \$5,000 in previous years. The Debtors, however, fail to explain that:

12 The maximum deduction that an individual may take for contributions
 13 to an IRA may be reduced when the individual or the spouse is an
 14 active participant and participates in any one of the following plans: a
 15 qualified plan (such as a defined contribution plan or defined benefit
 16 pension plan), a simplified employee pensions (SEPs), SIMPLE
 accounts, a qualified annuity plan, a tax-sheltered annuity plan, a Code
 Sec. 501(c)(18) trust created before June 25, 1959, or a governmental
 retirement plan (Code Sec. 219(g)).

17 *U.S. Master Tax Guide* ¶2153A, at 730 (citing 26 U.S.C. § 219(g) (emphasis added). For married
 18 individuals who are active participants in qualified plans (such as a defined contribution plan or a
 19 defined benefit plan), their ability to claim a deduction for contributions made to traditional IRAs
 20 depends upon the amount of their modified adjusted gross income. *Id.* ¶2153B, at 731.

21 The deduction for taxpayers making contributions to a traditional IRA
 22 is phased out for singles and heads of household who are covered by a
 23 workplace retirement plan and have modified adjusted gross incomes
 (AGI) between \$59,000 and \$69,000, up from \$58,000 and \$68,000 in
 24 2012. For married couples filing jointly, in which the spouse who
makes the IRA contribution is covered by a workplace retirement plan,
the income phase-out range is \$95,000 to \$115,000, up from \$92,000
to \$112,000. For an IRA contributor who is not covered by a
 25 workplace retirement plan and is married to someone who is covered,
 the deduction is phased out if the couple's income is between
 26 \$178,000 and \$188,000, up from \$173,000 and \$183,000.
 27

28 IRS News Release IR-2012-77 (Oct. 18, 2012); *see also U.S. Master Tax Guide* ¶ 2153B, at 731.

Without knowing the Debtors' modified adjusted gross income for tax year 2013, it is not clear whether the entire \$5,000 contribution to their IRA is deductible. To the extent that any portion of the \$5,000 contribution to the IRA is not deductible, that portion of the IRA in excess of the deductible amount should be nonexempt property of the estate.

CONCLUSION

My investigation into the Debtors' contributions to their various plans continues. Based on the all of the above, I request an Order that, to the extent that any contribution to the Debtors' plans exceeded the maximum contribution limit(s), exemption in that excess amount should be disallowed and the excess amount deemed nonexempt property of the estate.

Dated: August 19, 2013

/s/ Leslie T. Gladstone

Leslie T. Gladstone, Chapter 7 Trustee

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PROOF OF SERVICE

I, the undersigned, hereby declare as follows:

I am employed in the City of La Jolla, County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 401 Via Del Norte, La Jolla, California 92037.

On August 19, 2013, I caused to be served:

REPLY TO DEBTORS' OPPOSITION TO TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS

on the parties in this action by placing a true and correct copy thereof in a sealed envelope(s), addressed as follows:

Ahren Tiller, Esq.,
Bankruptcy Law Center
1230 Columbia St., Ste. 1100
San Diego, CA 92101
Attorney for Debtors
VIA FIRST CLASS MAIL

Emmanuel Culala Santos & Ma Ruby Zafra Santos
1683 Picket Fence Dr
Chula Vista, CA 91915

Debtors
VIA FIRST CLASS MAIL

United States Trustee
Department of Justice
402 West Broadway, Ste. 600
San Diego, CA 92101

VIA FIRST CLASS MAIL

■ (BY FIRST-CLASS U.S. MAIL) I placed each such sealed, prepaid envelope, for collection and mailing at Financial Law Group, La Jolla, California, following ordinary business practices. I am familiar with the practice of Financial Law Group for collection for U.S. mail, said practice being that in the ordinary course of business, correspondence is picked up at our office the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 above is true and correct.

3 Executed on August 19, 2013, at La Jolla, California.

4 /s/ Candi Collins

5 Candi Collins

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